

REMARKS/ARGUMENTS

Claims 1-67 are pending in the captioned application. The Examiner has required restriction under 35 U.S.C. 121 to one of the following inventions:

- I. Claims 1-22 and 43-58, drawn to a method for detecting a target nucleic acid, classified in class 435, subclass 6.
- II. Claims 23-42 and 59-67, drawn to a kit, classified in class 435, subclass 810.

Specifically, the Examiner states, "Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product of invention II, namely a kit comprising a probe, matrix and binding pair can be used in a materially different process besides the hybridization method of invention I."

Further, the Examiner states, "Because these inventions are distinct for the reasons given above and the search required for any one Group is not required for the other Group, restriction for examination purposes as indicated is proper. Likewise, because these inventions have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes as indicated is proper."


In response, Applicants elect, without traverse, to prosecute the invention of Group 1, namely claims 1-22 and 43-58. While Applicants disagree with the Examiner's conclusion on why the restriction is proper, Applicants have made this election without traverse for administrative convenience and to expedite prosecution of the elected claims. Applicants stand ready to cancel the withdrawn claims as soon as the Notice of Allowability of the elected claims is received.

In view of the foregoing, Applicants respectfully submit that claims 1-22 and 43-58 are in allowable form and earnestly solicit there allowance.

Early and favorable action is earnestly solicited.

Respectfully submitted,

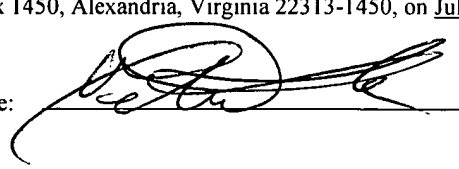
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on July 9, 2004.

Signature: 

Name: _____

Melissa Leck